

ADVISORY OPINION NO. 89-21

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 2, 1989

GOVERNMENTAL BODY SEEKING OPINION

Consultant for the West Virginia Research and Education Foundation (WVREF).

Opinion Sought

"Am I eligible to serve as a West Virginia Delegate as well as performing consulting services for the foundation?"

Other Facts Relied Upon By The Commission

The foundation is a non-profit organization which is affiliated with a hospital association. The foundation has received a grant from a regional commission to work with rural hospitals. Consultant fees are paid from grant monies.

Statutory Provisions Relied Upon By the Commission

West Virginia Code section 6B-2-5(d)(1) states in part that "no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract with the governmental body over which he or she has direct authority or with which he or she is employed; Provided, However, that nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body; Provided, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body.

West Virginia Code Section 6B-2-5(h)(1) states that no full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or independent contractor.

West Virginia Code section 6B-1-3(i) defines a "public official" as any person who is elected or appointed and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to (i) contracting for, or procurement of, goods or services, (ii) administering or monitoring grants or subsidies, (iii) planning or zoning, (iv) inspecting, licensing, regulating or auditing any person, or (v) any other activity where the official action has an economic impact of greater than de minimis nature on the interest or interests of any person.

ADVISORY OPINION

The Ethics Act specifically permits a member of the Legislature to enter into a contract with any governmental body and makes lawful the employment of any person with any governmental body. Therefore, it is not a violation under subsection 5(d)(1) for the delegate to receive as consulting fees the benefits or profits from a public grant.

Subsection 5(h)(1) speaks to employment of a full-time public official with any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental body. Employment includes services rendered as an independent contractor by the public official.

However, it is the commission's opinion that since the delegate serves only part-time that subsection 5(h)(1) does not apply to her and she is not precluded from acting as a consultant with a nonprofit organization which pays her fees from public grant money.

Lee F. Lemberg
Chairman